v. *Milligan*, 75 Mo. 41. And if it is so recorded it should have the same retroactive effect. But in the principal case A's mortgage was not recorded within a reasonable time. *Wilson* v. *Milligan*, *supra*. In such circumstances it has been held that an intervening creditor who takes a mortgage without notice will be protected although the prior mortgage is recorded first. *Bank of Farmington* v. *Ellis*, 30 Minn. 270. *Cf. Crooks* v. *Stuart*, 2 McCrary 13. It is submitted that this view is more equitable and more in accord with the purpose of the statute than the holding in the principal case, and it would seem that the delivery of possession to A should not affect the decision; for there is no authority for giving delivery an effect different from that of recording.

CONFLICT OF LAWS — MARRIAGE — VALIDITY OF FOREIGN MARRIAGE. — A Wisconsin statute prohibited remarriage by a divorcee within a year after the decree rendered, and declared that a marriage so contracted would be held null and void. To evade this statute the plaintiff and decedent were married in Michigan within a year after the latter had obtained a divorce. *Held*, that the marriage is void. *Lanham* v. *Lanham*, 117 N. W. 787 (Wis.).

That the validity of a marriage is determined by the *lex loci contractus* is the general rule in this country. *State* v. *Richardson*, 72 Vt. 49. But it is within the power of a state to declare by statute that certain marriages will not be recognized. *Pennegar* v. *State*, 87 Tenn. 244. And when a marriage valid where celebrated comes within the terms of such a statute, the question to be determined is one of legislative intent. *State* v. *Kennedy*, 76 N. C. 251. In this determination the courts refuse to construe a statute literally unless it reflects a state public policy. See *Van Voorhis* v. *Brintnall*, 86 N. Y. 18. And by the weight of authority no such policy is involved in statutes dealing with the remarriage of divorced persons. *Commonwealth* v. *Lane*, 113 Mass. 458. *Cf. McLennan* v. *McLennan*, 31 Ore. 480. Thus, the statute is held to apply only to marriages celebrated within the state. *Willey* v. *Willey*, 22 Wash. 115. In many states, however, such judicial legislation is not upheld, and the evasion of the law sought to be effected by temporary resort to a foreign jurisdiction, is not allowed. *Kruger* v. *Kruger*, 36 Nat. Corp. Rep. 442 (Ill., May, 1908); *Stull's Estate*, 183 Pa. 625. On principle these decisions are sound, but their effect upon the rights of innocent parties is deplorable. See *Commonwealth* v. *Lane*, *supra*.

CONFLICT OF LAWS — RECOGNITION OF FOREIGN PENAL LAWS — ASSESSMENTS. — An action was brought in England by an Australian municipality to recover a sum levied by it for street improvements. An Australian statute gave a right of action for such assessments. *Held*, that the action does not lie. *Sydney Municipal Council* v. *Cook*, 25 T. L. R. 6 (Eng., K. B. D., Oct. 15, 1908). See NOTES, p. 292.

CONTRACTS — DIVISIBLE CONTRACTS — PART PERFORMANCE OF INDIVISIBLE CONTRACT. — The plaintiff under an entire contract had furnished labor and material in installing a heating plant in the defendant's building, which was destroyed before the work was completed. The units of the plant had become part of the defendant's land when put in place. *Held*, that the defendant must pay in terms of the contract, irrespective of the benefit he has derived. *Dame* v. *Wood*, 70 Atl. 1081 (N. H.).

The general rule is that, when a party has contracted to do an entire work for a specific sum, he cannot recover unless the work be done. *Appleby* v. *Myers*, L. R. 2 C. P. 651. Relief is usually given quasi-contractually, however, to prevent the unjust enrichment of the defendant. *Britton* v. *Turner*, 6 N. H. 481. But a recovery for part performance such as was allowed in the present case is directly opposed to all the English decisions on the subject. See *Appleby* v. *Myers*, *supra*. It is analogous to the American rule that gives a servant employed on an entire contract, who is discharged for cause, a right to recover in terms of the contract. *Hildebrand* v. *Am. Fine Art Co.*, 109 Wis. 171. But that extension of the general rule is unsound in principle. See *Tim-*

berlake v. *Thayer*, 71 Miss. 279. The rule of the principal case is frequently followed on the ground that there is an implied promise to pay at the contract price for part performance, if further performance becomes impossible. *Butterfield* v. *Byron*, 153 Mass. 517. Such a construction seems nothing more than an unjustifiable fiction, and is opposed to the weight of American authority. *Siegel Cooper Co.* v. *Eaton & Prince Co.*, 165 Ill. 550.

CORPORATIONS — FEDERAL JURISDICTION — FORMATION OF NEW CORPORATION TO EFFECT DIVERSITY OF CITIZENSHIP. — The stockholders of a corporation organized in another state a new corporation, with the same officers and stockholders, in order to get a suit concerning certain land into the federal courts. The land was transferred by the first corporation to the second, which then brought an action in the federal court against a citizen of the state in which the original corporation was incorporated. *Held*, that the action is dismissed as an attempted fraud on the federal jurisdiction. *Miller & Lux* v. *East Side Canal, etc., Co.*, U. S. Sup. Ct., Dec. 7, 1908. See NOTES, p. 290.

CORPORATIONS — STOCKHOLDERS: POWERS OF MAJORITY — SUIT BY STOCKHOLDERS ON CORPORATION'S CAUSE OF ACTION. — M was a director and majority shareholder in the plaintiff corporation. The other three directors, who owned the remaining shares, became interested in a rival company, and refused to sanction proceedings against it for infringement of the plaintiff's patent. Thereupon M brought action in the plaintiff's name to restrain the rival company. His fellow-directors applied to have the name of the plaintiff struck out, as having been used without authority. *Held*, that the application must be dismissed, as the majority shareholders had the right to control the action of the directors in the matter. *Marshall's Valve Gear Co., Ltd.* v. *Manning, Wardle & Co., Ltd.*, 25 T. L. R. 69 (Eng., Ch. D., Nov. 13, 1908).

In this country an action in the corporate name usually can be brought only by the directors. *Arkansas River, etc., Co.* v. *Farmers' Loan & Trust Co.*, 13 Colo. 587. But disloyalty on the part of directors in their fiduciary relations to the stockholders will justify the latter in equitable proceedings to compel proper action. *Singers-Bigger* v. *McCourt*, 145 Fed. 103. And where directors decline to sue, any stockholder can secure an injunction to prevent a third party, aided by the directors, from wronging the plaintiff's corporation. *Weidenfeld* v. *Sugar Run Co.*, 48 Fed. 615. The corporation and the wrongdoer, however, must be joined as parties defendant. *Donelly* v. *Sampson*, 115 N. W. 1089. In England the majority shareholders can decide whether an action in the corporate name shall proceed. *Pender* v. *Lushington*, 6 Ch. Div. 70, 79. And any shareholder may file a bill against the directors, joining the corporation as co-plaintiff. *MacDougall* v. *Gardiner*, 1 Ch. Div. 13. If a dispute arises as to which side represents the majority shareholders, the court will grant a temporary injunction until it is determined. *Pender* v. *Lushington*, *supra*. In neither country is there authority for action, as sanctioned by the main case, brought by shareholders against a wrongdoer, without proceeding through the directors, either as plaintiffs or defendants.

CORPORATIONS — TRANSFER OF STOCK — SECRET AGREEMENT BY CORPORATION TO REDEEM STOCK. — In consideration of his subscription to the capital stock of a corporation, the subscriber was promised that at any time within ten years the corporation would buy back his stock at par value, on ninety days' notice. *Held*, that the agreement is void. *Matter of Owen Publishing Co.*, 20 Am. B. R. 639 (Circ. Ct., W. D. N. Y., May, 1908).

A corporation cannot, unless the power be especially delegated, change the amount of its capital stock. *Scovill* v. *Thayer*, 105 U. S. 143. The purchase of its own shares amounts to a reduction, and an agreement to purchase is bad for that reason. *Currier* v. *The Slate Co.*, 56 N. H. 262. Furthermore, such an agreement is a fraud on creditors, for if it were carried out it would diminish their security, at least until a resale. *Copin* v. *Greenless and Ransom Co.*, 38 Oh. St. 275. In the principal case even a resale would not protect creditors;